



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
SAM NUNN ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

February 4, 2020

INFORMATION REQUEST
URGENT LEGAL MATTER: PROMPT REPLY REQUESTED
CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Harold W. Wells, IV
Harold W. Wells & Sons, Inc.
1 N. 3rd Street
Wilmington, North Carolina 28401

Re: Request for Information Pursuant to Section 104 of CERCLA for Horton Iron & Metal
Superfund Site, Wilmington, New Hanover County, North Carolina

Dear Mr. Wells:

The U.S. Environmental Protection Agency seeks cooperation from Harold W. Wells & Sons, Inc. (Wells & Sons) in providing information and documents relating to insurance policies that may have been issued to Horton Iron and Metal Company (Horton). The EPA has named Horton as a potentially responsible party under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9607(a), for the EPA's response costs at the Horton Iron & Metal Superfund Site (Site) in Wilmington, New Hanover County, North Carolina. Under CERCLA, commonly known as the federal "Superfund" law, the U.S. Environmental Protection Agency responds to the release or threat of release of hazardous substances, pollutants or contaminants into the environment to stop additional contamination and to clean up or otherwise address any prior contamination. The EPA has determined that sediment, soil, and groundwater at the Site are contaminated with numerous hazardous substances requiring cleanup.

BACKGROUND INFORMATION

The Site is located at 2216 U.S. Highway 421 North in Wilmington, New Hanover County, North Carolina. The Site includes approximately 42 acres and is bounded by the Northeast Cape Fear River to the east. The Site is bisected in a north-south direction by a railroad spur, and the portion of the Site west of the spur remains in operation by Horton as metal, scrap, salvage, and recycling yard. The portion of the Site to the east of the spur is the focus of the present cleanup.

Horton is the current owner of the Site. Prior to Horton's ownership, the Site was used from 1911 to 1959 for fertilizer and insecticide production. Horton purchased the Site in June 1959, dredged two boat slips at the edge of the property along the river, and used the slips for shipbreaking – dismantling and disposing of navy vessels, off-shore drilling units, and commercial barges. It is believed that Horton

conducted its shipbreaking activities from 1962 to 1972. However, portions of old ships remained on the eastern half of the Site for many years, and remnants of a sunken barge remain in the boat slips to date. As the current owner of the Site property, and because its former shipbreaking activities resulted in the disposal of hazardous substances now requiring remediation at the Site, Horton is considered a potentially responsible party (PRP) pursuant to Sections 107(a)(1) and (a)(2) of CERCLA, 42 U.S.C. §§ 9607(a)(1), (a)(2). Contaminants of concern associated with Horton's shipbreaking activities include lead, arsenic, antimony, cadmium, copper, nickel, zinc, mercury, polychlorinated biphenyls (PCBs), asbestos, and semi-volatile organic compounds (SVOCs).

RESPONSE TO INFORMATION REQUEST

This information request is not a determination that your company is responsible or potentially responsible for the presence of the contamination at the Site. The EPA is sending this letter as part of its investigation of the Site and believes that information from your company will assist the Agency in assessing potential insurance coverage for the contaminated conditions at the Site. When the EPA determines that an individual or an entity is responsible or potentially responsible for response activities at a Site, the EPA sends a separate letter clearly stating such a determination as well as the EPA's basis for such determination.

CERCLA Section 104(e), 42 U.S.C. § 9604(e), gives the EPA the authority to require the respondent to respond to this information request. We encourage you to give this matter your full attention, and we respectfully request you to respond to this request for information.

If you have any questions concerning the Site or this information request letter, please contact Ann Mayweather, the Enforcement Project Manager for the Site, at (404) 562-8879, or via email at mayweather.ann@epa.gov. Please email your response to Ms. Mayweather within 30 calendar days of your receipt of this request. If you believe that you are unable to meet the 30-day deadline, please contact Ms. Mayweather to discuss a reasonable extension of the deadline. You may designate another official with the requisite authority to respond on your behalf. However, failure to respond to this information request may result in the EPA seeking penalties of up to \$57,317 per day of violation. In addition, furnishing false, fictitious or fraudulent statements or representations is subject to criminal penalty under 18 U.S.C. § 1001.

Please refer to Enclosures 1 and 2 for important instructions and definitions and Enclosure 3 for specific questions that require your response to this Information Request. For legal questions concerning this letter, please have your legal counsel contact Graham Burkhalter at (404) 562-9519, or by email at burkhalter.robert@epa.gov. Thank you for your attention to this matter.

Sincerely yours,



Ann Mayweather
Enforcement Project Manager
Superfund and Emergency Management Division

Enclosures (3)

ENCLOSURE 1

HORTON IRON & METAL SUPERFUND SITE INFORMATION REQUEST

INSTRUCTIONS

1. Please provide a separate narrative response for each Question and subpart of a Question set forth in this information request.
2. Precede each answer with the Question (or subpart) and the number of the Question (and the letter of a subpart of a Question, if applicable) to which it corresponds.
3. If information or documents not known or not available to you as of the date of submission of a response to this Information Request should later become known or available to you, ***you must supplement*** your response to the U.S. Environmental Protection Agency (EPA). Moreover, should you find, at any time after submission of your response, that any portion of the submitted information is false or misrepresents the truth or, though correct when made, is no longer true, you must notify the EPA of this fact as soon as possible and provide the EPA with a corrected response.
4. For each document produced in response to this Information Request, indicate on the document, or in some other reasonable manner, the number of the Question (and the letter of a subpart of a Question, if applicable) to which it responds.
5. You may assert a business confidentiality claim covering part or all of the information that you submit in response to this request. Any such claim must be made by placing on (or attaching to) the information, at the time it is submitted to the EPA, a cover sheet or a stamped or typed legend or other suitable form of notice employing language such as "trade secret," "proprietary," or "company confidential." Confidential portions of otherwise non-confidential documents should be clearly identified and may be submitted separately to facilitate the identification and handling by the EPA. If you make such a claim, the information covered by that claim will be disclosed by the EPA only to the extent, and by means of the procedures, set forth in Subpart B of 40 CFR Part 2. If no such claim accompanies the information when it is received by the EPA, it may be made available to the public by the EPA without further notice to you. The requirements of 40 CFR Part 2 regarding business confidentiality claims were published in the Federal Register on September 1, 1976, and were amended September 8, 1976, and December 18, 1985.
6. Personnel and medical files, and similar files the disclosure of which to the general public may constitute an invasion of privacy should be segregated from your responses, included on separate sheet(s), and marked as "Personal Privacy Information."
7. If you still have objections to some or all the questions within the Information Request Letter, you are still required to respond to each of the questions.

ENCLOSURE 2

HORTON IRON & METAL SUPERFUND SITE INFORMATION REQUEST

DEFINITIONS

The following definitions shall apply to the following words as they appear in this enclosure:

1. The terms “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of this Information Request any information which might otherwise be construed to be outside its scope.
2. The term “arrangement” means every separate contract or other agreement between two or more persons.
3. The terms “document(s)” and “documentation” mean any object that records, stores, presents, or transmits information, and include, but are not limited to, writings of any kind, formal or informal, whether or not wholly or partially in handwriting, including (by way of illustration and not by way of limitation) any invoice, manifest, bill of lading, receipt, endorsement, check, bank draft, canceled check, deposit slip, withdrawal slip, order; letter, correspondence, fax, telegram, telex, postcard; record book, minutes, memorandum of meetings and telephone and other conversations, telephone messages, inter- or intra-office communications; agreement, contract, and the like; log book, diary, calendar, desk pad, journal, scrapbook; bulletin, circular, form, pamphlet, statement; report, notice, analysis, notebook; graph or chart; photostat or other copy of any document; microfilm or other film record, photograph, or sound recording on any type of device; any tape, disc, or other type of memory generally associated with computers and data processing, together with the programming instructions and other written material necessary to use such disc, or disc pack, tape or other type of memory and printouts of such disc, or disc pack, tape or other type of memory; and attachments to, or enclosures with, any document as well as any document referred to in any other document. The term “document” shall also mean any electronically stored information, including but not limited to emails, word processing files, spreadsheets, presentations, databases, geographic information system (“GIS”) maps, computer-aided design files, scanned or digital photos, and scanned document images.
4. The term “identify” means, with respect to a natural person, to set forth the person’s name, present or last known business and personal addresses, email address(es), and telephone numbers, and present or last known job title, position or business.
5. The term “identify” means, with respect to a corporation, partnership, business trust or other association or business entity (including, but not limited to, a sole proprietorship), to set forth its full name, address, and legal form (e.g. corporation, partnership, etc.), organization, if any, a brief description of its business, and to indicate whether it is still in existence and, if it is no longer in existence, to explain how its existence was terminated and to indicate the date on which it ceased to exist.
6. The term “identify” means, with respect to any document(s), to provide its customary business description, its date, its number if any (invoice or purchase order number), subject matter, the identity of

the author, addressor, addressee and/or recipient, and the present location of such document.

7. The term “Site” or “facility” shall mean the Horton Iron & Metal Superfund Site in Wilmington, New Hanover County, North Carolina.

8. The term “you” or “Respondent” shall mean Harold W. Wells & Sons, Inc., its officers, managers, employees, contractors, trustees, partners, successors and agents.

9. The term “Horton Iron and Metal” means and includes Horton Iron & Metal Company, Horton Iron & Metal, Inc., and Horton Industries, Inc., its immediate corporate family, all subsidiaries, all entities in which Horton Iron and Metal or its subsidiary maintains a controlling interest, all entities in which Horton Iron and Metal or its subsidiary is a principal owner, all entities over which Horton Iron and Metal or its subsidiary has the ability to exercise significant influence (or control) over the operating or financial policies, and all entities with which Horton Iron and Metal or its subsidiary has a substantial business relationship.

10. All terms not defined herein shall have their ordinary meanings, unless such terms are defined in CERCLA, the Resource Conservation and Recovery Act, the Toxic Substances Control Act, the Clean Water Act, the Safe Drinking Water Act, or the Clean Air Act and their implementing regulations, in which case the statutory or regulatory definitions shall control.

ENCLOSURE 3

HORTON IRON & METAL SUPERFUND SITE INFORMATION REQUEST

QUESTIONS

1. Identify the time period during which Respondent placed insurance on behalf of Horton Iron and Metal, as well as the name and current whereabouts, if known, of individuals at Horton Iron and Metal with whom Respondent communicated and the nature of the communication.
2. Provide copies of all files in your possession relating to Horton Iron and Metal.
3. Provide copies of all casualty, liability and/or pollution insurance policies in your possession issued to Horton Iron and Metal (or their predecessors) from 1959 to present, including but not limited to comprehensive general liability, primary, umbrella and excess policies, as well as any environmental impairment liability or pollution legal liability insurance.
4. If there are any casualty, liability and/or pollution insurance policies issued to Horton Iron and Metal (or their predecessors) from 1959 to present of which you have any evidence, or of which you are aware but neither possess copies, nor are able to obtain copies, identify each such policy to the best of your ability by identifying:
 - a. The name and address of each insurer and of the insured;
 - b. The type of policy and policy numbers;
 - c. The per occurrence or per accident policy limits of each policy;
 - d. Whether each such policy is “primary” or “excess”; and
 - e. The commencement and expiration dates of such policy.
5. To the extent not identified in Questions 2 or 3 above, provide all other evidence of casualty, liability and/or pollution insurance issued to Horton Iron and Metal from 1959 to present.
6. For each policy of insurance identified in Questions 2, 3 or 4 above, provide all underwriting, placing and marketing files, claim files, loss control files, and premium audits, as well as any accounting records including retrospective rating adjustments, for each such policy.
7. Provide all documents and files that constitute, evidence, refer, or relate to claims made by Horton Iron and Metal under any of the policies identified in Questions 2, 3 or 4.
8. Identify and provide copies of all previous settlements by Horton Iron and Metal (or its predecessors) with its insurers which relate in any way to environmental liabilities and/or to casualty, liability and/or pollution insurance coverage, including:
 - a. The date of the settlement;
 - b. The scope of release provided under such settlement; and

- c. The amount of money paid by pursuant to such settlement.